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01/14/2016 11:24am \$86.00  
SNOHOMISH COUNTY, WASHINGTON

After recording mail to:

**City of Everett**

**City Clerk**

**2930 Wetmore Ave, Suite 100**

**Everett, WA 98201**

**NO EXCISE TAX  
REQUIRED**

**JAN 14 2016**

**KIRKE SIEVERS, Snohomish County Treasurer**

**By: KIRKE SIEVERS**

**COVER SHEET  
for recording purposes only**

**Document Title:** Riverside Business Park Public Access Agreement

**Grantor:** Port of Everett, a port district under the laws of the State of Washington  
City of Everett, a municipal corporation

**Grantee:** Port of Everett, a port district under the laws of the State of Washington  
City of Everett, a municipal corporation

**Legal Description:** N/A

**Assessor's Property Tax Parcel/Account Number:**

N/A
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**RIVERSIDE BUSINESS PARK  
PUBLIC ACCESS AGREEMENT**

**THIS RIVERSIDE BUSINESS PARK PUBLIC ACCESS AGREEMENT** (this "**Agreement**") is dated for reference purposes 12/28, 2015, and is entered into by and between the PORT OF EVERETT, a port district organized under the laws of the State of Washington (the "**Port**"), and the CITY OF EVERETT, a Washington municipal corporation (the "**City**").

**RECITALS**

A. The Port owns certain real property located within the corporate city limits of the City, commonly known as the Riverside Business Park. Entities other than the Port also own portions of the Riverside Business Park.

B. The legal descriptions of the properties within the Riverside Business Park are shown in the boundary line adjustment and survey recorded under Snohomish County recording number 9802235001 (the "**1998 BLA**"), the boundary line adjustment and survey recorded under Snohomish County recording number 200810165002 (the "**2008 BLA**"), and the boundary line adjustment and survey recorded under Snohomish County recording number 201207265001 (the "**2012 BLA**"). For the purposes of this Agreement, the properties within the Riverside Business Park are listed and defined in the table below:

<b>Property</b>	<b>Fee Interest Owner as of Date of this Agreement</b>	<b>Reference to Property Legal Description</b>
<b><i>North Exception Lot</i></b>	Marshall and Katherine Cymbaluk Family LLC	Parcel "B," as described in 2008 BLA
<b><i>South Exception Lot</i></b>	M.A.P. # 2 LLC	Tract 11-4, as described in 1998 BLA
<b><i>Access Tract A</i></b>	Port of Everett	Access Tract "A," as described in 2012 BLA
<b><i>Access Tract B</i></b>	Port of Everett	Access Tract "B," as described in 2012 BLA
<b><i>Access Tract C</i></b>	Port of Everett	Access Tract "C," as described in 2012 BLA
<b><i>Lot 1</i></b>	Port of Everett	Lot 1, as described in 2012 BLA
<b><i>Lot 2</i></b>	Port of Everett	Lot 2, as described in 2012 BLA
<b><i>Lot 3</i></b>	Port of Everett	Lot 3, as described in 2012 BLA
<b><i>Lot 4</i></b>	Port of Everett	Lot 4, as described in 2012 BLA
<b><i>Lot 5</i></b>	Port of Everett	Lot 5, as described in 2012 BLA

<b>Property</b>	<b>Fee Interest Owner as of Date of this Agreement</b>	<b>Reference to Property Legal Description</b>
<b><i>Lot 6</i></b>	Port of Everett	Lot 6, as described in 2012 BLA
<b><i>Lot 7</i></b>	Port of Everett	Lot 7, as described in 2012 BLA
<b><i>Lot 8</i></b>	Snohomish County	Lot 8, as described in 2012 BLA
<b><i>Lot 9</i></b>	Port of Everett	Lot 9, as described in 2012 BLA
<b><i>Lot 10</i></b>	Port of Everett	Lot 10, as described in 2012 BLA

C. The Riverside Business Park is located within the purview of the Shoreline Management Act, Chapter 90.58 RCW, and the City's Shoreline Master Program implementing the Shoreline Management Act. Accordingly, the City and the Port have agreed on public access improvements for the Riverside Business Park, all as set forth in this Agreement.

D. The locations of the agreed public access improvements, which consist of the trails, sidewalks, viewpoints and associated improvements, are shown on **Exhibit 1** to this Agreement (the "***Public Access Summary Drawing***"). Contemporaneously with the execution of this Agreement, the parties are recording public access easements against Lots 1, 2, 3, 4, 6, 7, and 9 and Access Tract B, all executed by the City and the Port in the form agreed to by the City and the Port (the "***Lot Easements***"). In addition, and also contemporaneously with the execution of this Agreement, the parties are executing and recording an access easement to provide the City access through Lot 7 and Lot 9, so that the City may access City property south of Lot 9.

E. As shown on the Public Access Summary Drawing, the City and Port have decided that some of the agreed public access improvements will be constructed and dedicated to public use by the owners of Lots 2, 3, 7, and 9, all generally at the time of the development of those lots. In order to accomplish this, the City and Port have agreed to subject those lots to public access covenants that require such construction and dedication. Accordingly, the Port and City are executing and recording public access covenants against Lots 2, 3, 7, and 9 contemporaneously with this Agreement (the covenants collectively, the "***Lot Covenants***").

F. As also shown on the Public Access Summary Drawing, the City and Port have also decided that some of the agreed public access improvements will be constructed and dedicated to public use by the Port. The construction requirements for such Port-built improvements are as follows:

- Construction requirements for trails are dimensional requirements in Section I.B.6 below and the drawings and specifications by the drawings and specifications by Talasea Consultants dated August 23, 1999, and received by the City on September 7, 1999, and which are available from the City of Everett Planning Department. For the purposes of reference, a small copy of

such drawings and specifications is shown in the attached **Exhibit 2**, with parts not relevant (if any) crossed out (the “***Trail Requirements***”).

- Construction requirements for sidewalks are contained in City of Everett Design and Construction Standards Specifications for Development # 306, except that sidewalks must be 10 feet wide and must have a 2-foot buffer on the street side and a 2 foot buffer on the non-street side, with the buffers providing at least 2-feet of clearance from utility improvements (such as, for example, fire hydrants) (the “***Sidewalk Requirements***”).
- Construction requirements for viewpoints are the drawings and specifications by Talasea Consultants dated August 23, 1999, and received by the City on September 7, 1999, and which are available from the City of Everett Planning Department. For the purposes of reference, a small copy of such drawings and specifications is shown in the attached **Exhibit 2**, with parts not relevant (if any) crossed out (the “***Viewpoint Requirements***”).

G. For the purposes of project coordination, the parties have also determined that the Port’s construction of some elements of the agreed public access improvements should not occur until after the completion of work associated with the Tulalip water pipeline project within the Riverside Business Park. In particular, contractors for the Tulalip Tribes will be constructing certain pipeline improvements within an easement or easements granted by the Port to the City (this construction in the Riverside Business Park, the “***Tulalip Pipeline Project***”). Because there is no reason to complete public access improvements only to have the Tulalip Pipeline Project later damage or destroy those improvements, the City and Port have agreed that some of the Port’s public access improvements will be constructed after the completion of the Tulalip Pipeline Project, all as set forth in this Agreement.

H. Accordingly, the purpose of this Agreement is to formalize the City and Port’s agreements and decisions regarding public access at the Riverside Business Park. This Agreement, the Lot Easements, and Lot Covenants are collectively intended by the parties to represent the entirety of public access requirements for the Riverside Business Park under the Shoreline Management Act and City’s Shoreline Master Program.

I. Prior to this Agreement, the City and Port have also executed a General Transfer Agreement (the “***General Transfer Agreement***”). The principal purpose of the General Transfer Agreement, under the terms and conditions therein, is to transfer certain road and utility improvements to the City. The parties intend this Agreement and the General Transfer Agreement together to set forth the agreement of the parties regarding their obligations concerning the Riverside Business Park.

## **AGREEMENT**

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Section 1. Port-Built Improvements.**

A. Port Construction Obligations. The Port shall construct the following improvements and associated buffers at no cost to the City:

1. Gas Regulator Related Trail. The Port shall complete construction of a trail connection from the current shoreline trail on Lot 1 to the north boundary of Lot 1 (this trail connection, the “**Regulator Trail**”). As of the date of this Agreement, the Regulator Trail is substantially complete.

2. Lot 1 Shoreline Trail North Connector. The Port shall construct a trail connection from the sidewalk on Access Tract A to the shoreline trail on Lot 1 (this new trail connection together with the portion of the currently-existing Lot 1 shoreline trail that is not Regulator Trail, collectively the “**Lot 1 Shoreline Trail North Connector**”). The Port shall locate the Lot 1 Shoreline Trail North Connector approximately as shown on the Public Access Summary Drawing. The Port shall construct the Lot 1 Shoreline Trail North Connector in accordance with the Trail Requirements (except for the portion of the Lot 1 Shoreline Trail North Connector marked as “C” on the Public Access Summary Drawing, which will be a sidewalk), together with applicable City standards for such construction. The Port shall complete the Lot 1 North Connector no later than December 31, 2015.

3. Lot 1 Trail South Connector. The Port shall construct (or cause to be constructed) a trail connection from the Lot 1 shoreline trail to the road on Access Tract B (this new trail connection, the “**Lot 1 South Connector**”). The Port shall locate the Lot 1 South Connector approximately as shown on the Public Access Summary Drawing. The Port shall construct the Lot 1 South Connector in accordance with the Trail Requirements, together with applicable City standards for such construction. The Port shall complete the Lot 1 South Connector within six (6) months after the completion of the Tulalip Pipeline Project or by December 31, 2019, whichever is later. The completion of the Lot 1 South Connector will satisfy condition 26 of SMA 08-002.

4. North Viewpoint. The Port shall construct a shoreline viewpoint that is connected by trail to the Lot 1 shoreline trail (this viewpoint, the “**North Viewpoint**”). The Port shall locate the North Viewpoint approximately as shown on the Public Access Summary Drawing. The Port shall construct the North Viewpoint in accordance with the Viewpoint Requirements, together with applicable City standards for such construction. The Port shall complete the North Viewpoint within six (6) months after the completion of the Tulalip Pipeline Project or by December 31, 2019, whichever is later.

5. Sidewalk Connector. The Port shall construct a continuous sidewalk that connects from the Lot 1 shoreline trail to the southwest corner of Lot 6 (this sidewalk, the “**Sidewalk Connector**”). The Port shall locate the Sidewalk Connector approximately as shown on the Public Access Summary Drawing. The Port shall construct the Sidewalk Connector in accordance with the Sidewalk Requirements, together with applicable City standards for such construction. Portions of Sidewalk Connector may be located on portions of Lot 2, Access Tract B, Access Tract C, Lot 4, Lot 5, Lot 6, Lot 7, and Lot 3, but in no event may the Sidewalk

Connector cause the road width of the road in any Access Tract at any point to be less than 30 feet from curb to curb. The Port shall complete the Sidewalk Connector within six (6) months after the completion of the Tulalip Pipeline Project.

6. Central Viewpoint and Central Viewpoint Connector Trail and Connector.

The Port shall construct a shoreline viewpoint in the southeast portion of Lot 3 (this viewpoint, the “**Central Viewpoint**”). The Port shall also construct a connection from the Sidewalk Connector to the Central Viewpoint (this connection along the road, the “**Connector**”; this connection not along the road, the “**Central Viewpoint Connector Trail**”). The Port shall locate the Central Viewpoint and the Central Viewpoint Connector Trail approximately as shown on the Public Access Summary Drawing. The Port shall construct these improvements in accordance with the Viewpoint Requirements (for the Central Viewpoint), Sidewalk Requirements (for the Connector) and the Trail Requirements (for the Central Viewpoint Connector Trail), together with applicable City standards for such construction. The Port shall complete the Central Viewpoint, Connector, and the Central Viewpoint Connector Trail no later than December 31, 2019. However, (a) the Port shall complete the Connector no later than the date of Lot 6 occupancy, if such occupancy date is earlier than December 31, 2019, and (b) the Port shall complete the Central Viewpoint, Connector, and Central Viewpoint Connector Trail no later than the date of Lot 3 occupancy, if such occupancy date is earlier than December 31, 2019.

7. Continuity. The Port shall construct the foregoing improvements so that they connect to each other, to provide for continuity in trail and sidewalk public access and to avoid dead-ends. Regardless of any provision to the contrary in this Agreement, the parties will amend Lot Easements as necessary to achieve continuity as shown in the Public Access Summary Drawing.

B. Port Dedication Obligations.

1. Access Tract A, Lot 1, and North Viewpoint. Within ninety (90) days after the City acceptance of the Regulator Trail, the Lot 1 Shoreline Trail North Connector, the Lot 1 South Connector, and the North Viewpoint, the Port shall fully execute and deliver to the City such documents as the parties may reasonably deem necessary (such as a bill of sale or similar documentation) to demonstrate that the Regulator Trail, Lot 1 Shoreline Trail North Connector (except for the portion marked as “C” on the Public Access Summary Drawing), the shoreline trail on Lot 1, the sidewalk on Access Tract A, the Lot 1 South Connector, and the North Viewpoint are dedicated as City property in accordance with the Lot Easements.

2. Sidewalk Connector. Within ninety (90) days after the City acceptance of the Sidewalk Connector, the Port shall fully execute and deliver to the City such documents as the parties may reasonably deem necessary (such as a bill of sale or similar documentation) to demonstrate that the Sidewalk Connector is dedicated as City property in accordance with the Lot Easements.

3. Central Viewpoint, Central Viewpoint Connector Trail, and Connector. Within ninety (90) days after the completion of the Central Viewpoint, Central Viewpoint Connector Trail, and Connector, the Port shall fully execute and deliver to the City such

documents as the parties may reasonably deem necessary (such as a bill of sale or similar documentation) to demonstrate that the Central Viewpoint, Central Viewpoint Connector Trail, and Connector are dedicated as City property in accordance with the Lot Easements.

4. Coordination with Previously Granted Easements. The parties acknowledge that dedication to public use of certain improvements and real property may occur in connection with the General Transfer Agreement. The parties will cooperate so that the dedications under this Agreement and the General Transfer Agreement coordinate with each other without unnecessary overlap or confusion.

5. Landscape Monitoring and Maintenance. The shoreline permit issued for improvements under this Agreement will state usual and customary requirements for landscape within shoreline jurisdiction, including, for example, Port responsibility for landscape maintenance and monitoring for a period after dedication. At the time of dedication under Sections B.1-B.3 above, the Port will provide the City with landscape assurance device(s) for such requirements reasonably acceptable to the City. The assurance device will be in a form and an amount as is usual and customary for landscape dedicated to the City.

6. Easement Areas. Unless an authorized representative of the Port, the City's planning director, and the City's public works director all agree in writing otherwise, the public access improvements will be built within the easement areas of the Lot Easements. Buffers and landscaping shall be in accordance with applicable shoreline permit requirements, which may require buffers and landscaping inside and outside of such easement areas. If alternative locations are so agreed to, then the Port will provide the survey exhibits (including legal descriptions) of the alternative locations, and the parties will cooperate to execute and record amendments to the Lot Easements so that the public access improvements are completely within such amended easement areas. The parties acknowledge that the following, in any event, are requirements for the easement areas:

- The easement areas for shoreline trails and viewpoints will be within a shoreline corridor of 50 feet in width, which corridor includes will include trail, viewpoint and buffer, but will not include any bulkhead.
- For sidewalks, the easement area will include (a) the sidewalk area itself; (b) and a 2-foot buffer on the street side, with the buffer providing at least 2-feet of clearance from utility improvements (such as, for example, fire hydrants); and (c) a 2 foot buffer on the non-street side.
- For non-shoreline trails, the easement area will include a 10 foot wide trail along with 3 feet on each side of the trail, for a total of 16 feet.

### **Section 3. Enforceability Provision Regarding Lot Covenants.**

If the Port sells or otherwise transfers any Lot subject to a Lot Covenant, the Port shall include in its sale and transfer documents a provision in which the Lot buyer/transferee acknowledges the Lot Covenant, acknowledges and agrees to the Lot Covenant's enforceability, and agrees to develop the Lot in accordance with the Lot Covenant.



**Section 4. Entirety of Public Access Requirements.**

The City and Port agree that the requirements of this Agreement and the Lot Covenants collectively satisfy all public access requirements for Riverside Business Park under the Shoreline Management Act and the City's Shoreline Master Program.

**Section 5. General Provisions.**

A. Governing Law. The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.

B. Venue. The Parties shall bring any litigation arising out of or relating to this Agreement only before the Snohomish County Superior Court.

C. Complete Agreement. This Agreement constitutes the entire agreement of the parties relating to the subject matter of this Agreement. This Agreement supersedes and replaces all other written or oral agreements thereto.

D. Amendment. No amendment to this Agreement will be effective unless in writing and signed by the Mayor of the City and by an authorized representative of the Port.

E. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

F. Notice. For a notice under this Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid.

<b>Notice to City</b>	<b>Notice to Port</b>
Planning Director 2930 Wetmore, 8th Floor Everett, WA 98201	Port of Everett Properties Group 1205 Craftsman Way, Suite 107 Everett, WA 98201

A party may change its address by delivering written notice to the other party of the new address.

G. Attorneys' Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorney's fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.



H. No Third-Party Beneficiaries. The provisions of this Agreement are for the sole benefit of the parties to this Agreement. No other persons have any rights or remedies under this Agreement.


I. Compliance with the Washington State Public Records Act. The parties acknowledge they are subject to the Public Records Act, chapter 42.56 RCW. Both parties shall cooperate with each other so that each may comply with all of its obligations under the Public Records Act.

**[SIGNATURE PAGES FOLLOW]**

**PORT OF EVERETT**

  
By: Les Reardanz  
Its: CEO/Executive Director


Approved as to form:

 12/4/15  
By: Bradford N. Cattle  
Port Attorney

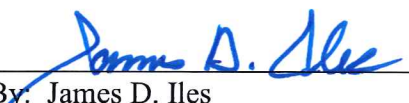
**CITY OF EVERETT**

  
By: Ray Stephanson  
Its: Mayor

Attest:

  
City Clerk

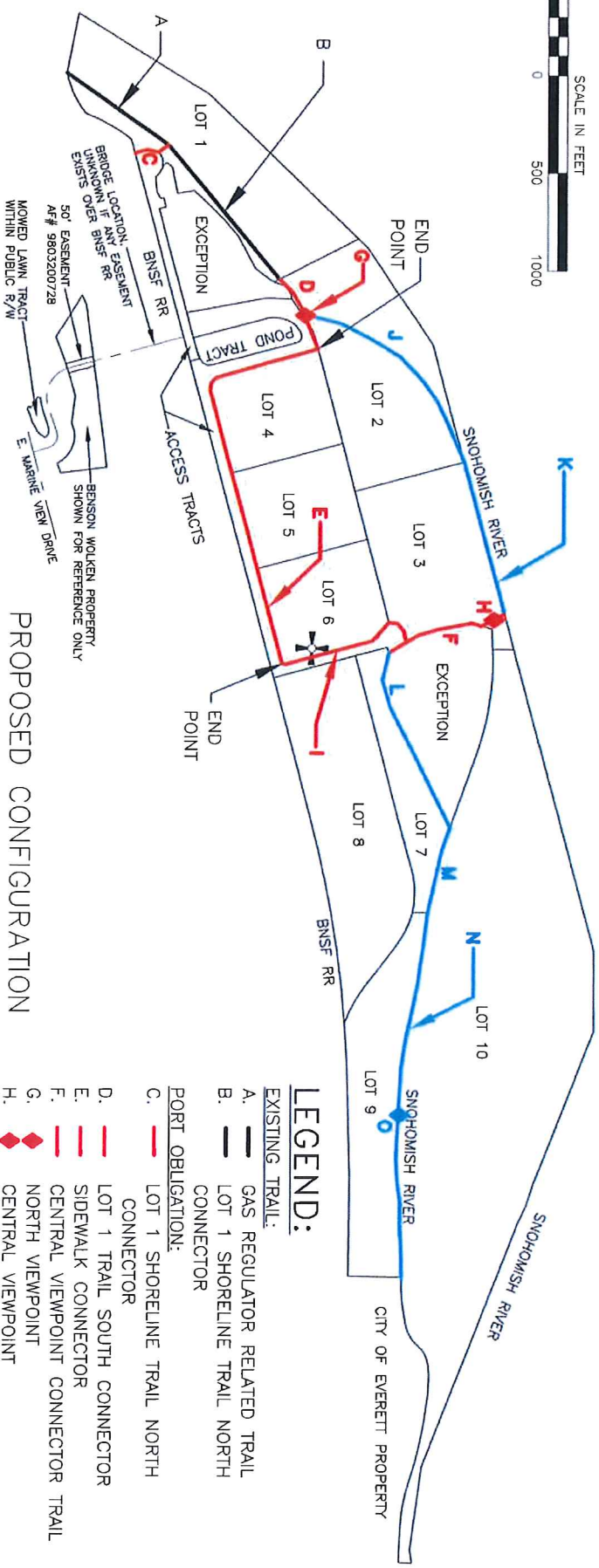
Approved as to form:

  
By: James D. Iles  
City Attorney

**EXHIBIT 1**

**TO**  
**RIVERSIDE BUSINESS PARK**  
**PUBLIC ACCESS AGREEMENT**

PUBLIC ACCESS SUMMARY



PROPOSED CONFIGURATION

LEGEND:

EXISTING TRAIL:

- A. — GAS REGULATOR RELATED TRAIL
- B. — LOT 1 SHORELINE TRAIL NORTH CONNECTOR

PORT OBLIGATION:

- C. — LOT 1 SHORELINE TRAIL NORTH CONNECTOR
- D. — LOT 1 TRAIL SOUTH CONNECTOR
- E. — SIDEWALK CONNECTOR
- F. — CENTRAL VIEWPOINT CONNECTOR TRAIL
- G. — NORTH VIEWPOINT
- H. — CENTRAL VIEWPOINT
- I. — CONNECTOR

TRAIL COVENANTS:

- J. — LOT 2 SHORELINE TRAIL COVENANT
- K. — LOT 3 SHORELINE TRAIL COVENANT
- L. — LOT 7 CONNECTOR TRAIL COVENANT
- M. — LOT 7 SHORELINE TRAIL COVENANT
- N. — LOT 9 SHORELINE TRAIL COVENANT
- O. — LOT 9 VIEWPOINT



PORT OF EVERETT												DWG NO <b>1</b>	
PROJECT REVISION				DATE				BY				PROJECT NO	
AS SHOWN				06/24/2015				B. WHITAKER				CP NO	
				E. GROENEMAN				I. BATTUELLO				PROJECT	
												SHEET 1 OF 1	

**EXHIBIT 2**

**TO**  
**RIVERSIDE BUSINESS PARK**  
**PUBLIC ACCESS AGREEMENT**

THIS SHEET HAS BEEN INSERTED AT THE TIME OF RECORDING INSTEAD OF  
A SMALL COPY OF THE ***"Public Access Shoreline Improvements"*** DRAWINGS AND SPECIFICATIONS  
DUE TO ITS NON-RECORDABLE FONT SIZE AND LEGIBILITY.

PLEASE REFER TO THE ***"Public Access Shoreline Improvements"*** DRAWINGS AND SPECIFICATIONS ON  
FILE WITH THE CITY OF EVERETT PLANNING DEPARTMENT AS SPECIFIED IN THE AGREEMENT.

Agreement

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Public Access Agreement \_\_\_\_\_ Consent  
and Associated Documents \_\_\_\_\_ Action  
with Port of Everett \_\_\_\_\_ First Reading  
Regarding Public Access \_\_\_\_\_ Second Reading  
at Riverside Business Park \_\_\_\_\_ Third Reading  
\_\_\_\_\_ Briefing

COUNCIL BILL # \_\_\_\_\_  
Originating Department Planning/Legal  
Contact Person Allan Giffen, Tim Benedict  
Phone Number 425-257-8725/8669  
FOR AGENDA OF October 28, 2015

Initialed by:  
Department Head \_\_\_\_\_  
CAA \_\_\_\_\_  
Council President \_\_\_\_\_

**Location**

Riverside Business Park

**Preceding Action**

General Transfer  
Agreement 05/28/2014

**Attachments**

Map

**Department(s) Approval**

Planning, Legal, Admin

Amount Budgeted	-0-	
Expenditure Required	-0-	
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:** Last year, City Council approved an agreement with the Port setting up a framework for the transfer of streets and utilities (including the bridge) at Riverside Business Park to public use and City ownership. This proposed agreement is the companion to that earlier agreement, and it sets up a framework for public trails, viewpoints and sidewalks.

Per the agreement, the Port will immediately grant to the City public access easements for all of the trails and improvements shown on the attached map. Responsibility for actually building the trails and improvements is allocated as follows:

- The trails in black (Segments A & B) have already been built and will be dedicated to the City
- The trails, sidewalks, and viewpoints in red will be built by the Port and will be dedicated to the City on the schedule below:

Segment	Construction Deadline
C	December 31, 2015
D, G	Six (6) months after the completion of the Tulalip Pipeline Project or by December 31, 2019, whichever is later *
E	Six (6) months after the completion of the Tulalip Pipeline Project *
F,H, I	December 31, 2019

\* The Tulalip Pipeline Project segment is currently out to bid by the Tulalip Tribes and should be completed by late next year

- The trails and sidewalks in blue will be built and dedicated by the owner(s) of each lot, as the lot develops

**The complete agreement is available in the Council offices.**

**RECOMMENDATION:** Authorize the Mayor to sign the Public Access Agreement and associated documents with the Port of Everett regarding public access at the Riverside Business Park, in substantially the form provided.

Council Approved  
on 11/4/15  
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